Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No.896 of 2001
(Old No. 1235/2000)

1. Tejender Pal Singh s/o Sardar Bhagat Singh R/o 36/43 Karanpur, Dehradun

……Claimant/Appellant

Versus

1. Shri Inderjit Nagar, S/o Shri Gopal Chand R/o Bharat Dairy, Opp. Uttam Nagar Bus Terminal, New Delhi (owner of truck)
2. Shri Vikram, S/o not known to the claimant, C/o Shri Inderjit Nagar, Bharat Dairy, Opp. Uttam Nagar Bus Terminal, New Delhi (Driver of truck)
3. Oriental Insurance Company, R/o A-25-27, Asaf Ali Road, New Delhi through its General Manager.

……Opposite Parties/Respondents

Shri K.N. Joshi, learned counsel for the appellant.
Shri Pankaj Purohit, learned counsel for the Respondent.

Date: October 27, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dated 17.06.2000 passed by Motor Accident Claims Tribunal/ Additional District Judge-I, Dehradun in Motor Accident Claims Case No.93 of 1998, whereby the Tribunal has rejected the claim petition of the appellant. The relief claimed by this appeal by the Appellant is to allow the claim petition filed by the appellant and set aside the impugned judgment and award of the Court below mainly on the grounds that appellant had proved his case through Medical evidence and medical certificate that he had suffered multiple fracture in his right leg causing 40 percent

permanent disability to the appellant and the accident was also proved.

Brief facts giving rise to this appeal are that Shri Tejendra Pal Singh on 09.11.1997 was going to Delhi by his Ambassador Car No. UP-07-B-6434. When he just reached at Navla Puliya near Mussarpur & Khatauli, a milk-tanker bearing No.DL-1A-2696 which was being driven rashly and negligently by O.P. No.2, came from the wrong side and hit the deceased due to which he received grievous injuries upon his body and his right leg got fractured from 3-4 places. The injured was taken to the hospiteal of Dr. Johri. He was hospitalized their from 09.12.1997 till 15.11.1997. Subsequently, he was taken to Dr. Harish Kohli's hospital for operation and a rod was also inserted in his right leg.

The O.P. No.3, Oriental Insurance Company only contested the claim petition before this Tribunal by filing their separate written statement. They denied the allegations made in the claim petition. They further denied that the Appellant was going to Delhi by his Ambassador Car No.UP-07-B-6034 and they have also denied that the Appellant has received any injuries in that incident. But they have accepted in their reply that the disputed vehicle was insured by them for insurance. The Tribunal, on the pleadings of the parties, framed the following necessary issues: -

1. Whether the accident did occur on 09.12.1997 due to the rash and negligent driving of the driver of Truck No.DL-1A-2696?

2. Whether the claimant is entitled to receive any compensation? If yes, then how much and from whom?

The Tribunal while decided Issue No.1, found that claimant is unable to prove that the accident had occurred due to the rash and negligent driving by Truck No.DL-1A-2696. As regard Issue No.2, the Tribunal found that as the said accident was not occurred by the truck in question, the claimant is not entitled to get any compensation. Secondly, it was also held that all the bills and vouchers submitted by the claimant by paper No.47-C obtained from Titu Medical Store and are of the same date. The Tribunal gave a finding that all these bills are forge hence the Tribunal come to the conclusion that the claimant is not entitled to get any compensation and dismissed the claim petition accordingly.

We have heard Shri K.N. Joshi, learned counsel for the Appellant and Shri Pankaj Purohit, learned counsel the Oriental Insurance Company and have carefully gone through the material on record including the impugned judgment and award.

The learned counsel for the Appellant fairly conceded that the claimant atleast should have been awarded compensation by the Tribunal under Section-140 of the Motor Vehicles Act for No Fault Liability. We have gone through the findings recorded in the impugned judgment found that the Tribunal has outrighty rejected the claim petition of the claimant. The Tribunal has erred in not awarding the compensation in No Fault Liability.

Under the facts and circumstances of the case and the nature of the injuries suffered by the claimant, we are of the opinion that the claimant shall be paid Rs.25,000/- under Section-140 of the Motor Vehicles Act in the count of No Fault Liability.

The appeal is partly allowed. The claimant is entitled for Rs.25,000/- (Rupees twenty five thousand only) under Section-140 of the Motor Vehicles Act alongwith interest at the rate of 8% (eight percent) per annum from the date of filing of the claim petition till the date of actual payment. The amount shall be paid by the Opposite Party No.3, National Insurance Company Limited.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang